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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 MICHAEL ALLEN YOCOM,

12 Petitioner,

13 v.

14 KATHLEEN ALLISON,

15 Respondent.
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Case No. 1:21-cv-00187-NONE-HBK

ORDER DENYING PETITIONER'S
CONSTRUED UNAUTHORIZED PLEADING

(Doc. No. 34)

ORDER DENYING PETITIONER'S MOTION
FOR EVIDENTIARY HEARING

(Doc. No. 34)

ORDER DENYING AS MOOT
PETITIONER'S MOTION TO SERVE
RESPONDENT

(Doc. No. 34)

21 Petitioner Michael Allen Yocom, a state prisoner proceeding *pro se*, has pending a
22 petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. No. 1). Before the court is
23 Petitioner's motion "to clarify language of the petition and mistakes," motion to "have respondent
24 served" and motion for "immediate emergency evidentiary hearing." (Doc. No. 34). On May 10,
25 2021, the court directed Respondent to file a response to the petition. (Doc. No. 23).
26 Respondent's response is not yet due. (*See* Doc. No. 23 at 2, directing response within sixty
27 days). As explained below, the court denies petitioner any relief requested in his motion and
28 warns him that future duplicative motions may subject him to sanctions.

1 **1. Unauthorized Pleading**

2 Although framed as a motion to “clarify” the petition to correct “mistakes,” Petitioner
3 simply rehashes the reasons why he believes his underlying conviction is illegal. (*See generally*
4 Doc. No. 34). The Rules Governing Section 2254 Cases in the United States District Courts
5 provide for the filing of a habeas petition (Rule 2), an answer, and a reply (Rule 5). Additional
6 briefing may be permitted upon a court order to expand the record (Rule 7). Here, Petitioner
7 submits a pleading which repeats many of the arguments he has made in his petition. (*Compare*
8 Doc. No. 1 *with* Doc. No. 34). The court has not ordered Petitioner to submit any additional
9 briefing. To the extent Petitioner wishes to re-raise any arguments in support of his petition, he
10 may do so in his reply to respondent’s response. Therefore, the court denies the motion as an
11 unauthorized pleading.

12 **2. Motion to Serve Respondent**

13 Petitioner in the title only of his motion requests the court to serve respondent. (Doc. No.
14 34 at 1). As noted above, the court has already directed the Respondent to respond to the petition.
15 (Doc. No. 23). And, Respondent’s response to the petition is not yet due. (*Id.*). Accordingly,
16 this aspect of Petitioner’s request is denied as moot.

17 **3. Motion for Evidentiary Hearing**

18 Again, in the title Petitioner indicates he is seeking an emergency evidentiary hearing.
19 This aspect of his motion is denied for the reasons stated in the court’s previous orders denying
20 Petitioner’s motions for evidentiary hearings. (Doc. Nos. 8, 20, 33). Evidentiary hearings are
21 granted only under limited circumstances in habeas proceedings. *See* 28 U.S.C. §
22 2254(e)(2)(A)(ii). Because no response to the petition has yet been filed, it is premature to hold
23 an evidentiary hearing. *See* Rules Governing Section 2254 Cases, R. 8(a).

24 **4. Warning to Petitioner**

25 The court notes that Petitioner has filed numerous requests to this court, including five
26 motions for evidentiary hearings (Doc. Nos. 6, 14, 18, 31, 34) and three unauthorized pleadings.
27 (Doc. Nos. 27, 32, 34). Most of Petitioner’s filings are styled as “emergency” motions;
28 however, the court has found that the content of the filings do not constitute emergencies. (Doc.

1 No. 33). In each of its orders either denying Petitioner relief or striking unauthorized pleadings
2 from the record, the court has provided Petitioner with the pertinent procedural information
3 related to his filings. (*See, e.g.*, Doc. Nos. 8, 20, 28, 33). Yet, Petitioner has persisted in filing
4 repetitive motions and pleadings. The court immediately undertakes a review of a pleading
5 labeled an “emergency,” which wastes valuable and limited judicial resources.

6 “Flagrant abuse of the judicial process cannot be tolerated because it enables one person
7 to preempt the use of judicial time that properly could be used to consider the meritorious claims
8 of other litigants.” *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007).
9 And this court has “long labored under one of the heaviest caseloads in the nation.” *See* Standing
10 Order in Light of Ongoing Judicial Emergency in Eastern District of California.¹ Courts have the
11 discretion to manage its own docket. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)
12 (Ninth Circuit noting that “[i]t is incumbent upon us to preserve the district courts’ power to
13 manage their dockets without being subject to the endless vexatious noncompliance of
14 litigants.”). Moreover, as previously noted, the rules governing habeas petitions direct that
15 habeas pleadings include a petition, answer, and reply only. *See* R. Governing Section 2254
16 Cases 2, 5.

17 The court finds that Petitioner’s repetitive filings seeking the same forms of relief, which
18 have already been denied by the court, to constitute an abuse of judicial process. Such continued
19 filings may prompt the court to sanction petitioner. Such sanctions may include ordering the
20 clerk’s office to refrain from docketing any further filings until the court has reviewed them
21 and/or ordering the Petitioner so show cause why the petition should not be dismissed for abuse
22 of judicial process.

23 Many of Petitioner’s unauthorized pleadings either repeat or expand upon arguments
24 raised in his original petition. Arguments based on Petitioner’s original claims may be addressed
25 in Petitioner’s reply to Respondent’s response to his petition. To the extent Petitioner wishes to
26 raise new claims from those raised in his original petition, he should move to file an amended

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28 ¹ Available at: <http://www.caed.uscourts.gov/caednew/assets/File/Standing%20Order%20CV.pdf>; last
accessed May 25, 2021.

petition under Federal Rule of Civil Procedure 15(a)(2). Any new claims raised in an amended petition must have been exhausted in the state courts and be timely, meaning that the claims are either filed within AEDPA's statute of limitations or that they relate back to the claims raised in the original petition. *See* 28 U.S.C. § 2244(d)(1)(A); Fed. R. Civ. P. 15(c).

Accordingly, it is ORDERED:

1. Petitioner's motion (Doc. No. 34) is **DENIED in its entirety**. His motion to clarify, which merely rehashes arguments raised in his petition, is **DENIED** as an unauthorized pleading (Doc. No. 34).
2. Petitioner's motion for evidentiary hearing (Doc. No. 34) is **DENIED**.
3. Petitioner's motion to serve respondent (Doc. No. 34) is **DENIED as moot**.

IT IS SO ORDERED.

Dated: May 25, 2021


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE